

DEPARTMENT OF HEALTH
STATE OF HAWAII

RULES OF PRACTICE AND PROCEDURE

PART A

RULES OF GENERAL APPLICABILITY

1. These rules are made pursuant to the Hawaii Administrative Procedure Act (Act 103, S.L. 1961), Chapter 14A, R.L.H. 1955 (1960 Supplement) and Chapter 46, R.L.H. 1955, as amended, and other related laws and shall govern procedure before the Department of Health of the State of Hawaii. They shall be construed to secure the just, speedy, and inexpensive determination of every proceeding authorized by law.
2. Definitions
 - (a) As used in the rules and regulations prescribed by the Department of Health, unless the context specifically requires:
 - (1) Department. The term "Department" means the Department of Health.
 - (2) Director. The term "Director" means the Director of Health.
 - (3) Hearing. The term "hearing" means any formal proceeding for the determination of the legal rights of specific parties which is authorized by law or rules in a matter which is initiated by action taken, or to be taken, by the Department or which may be initiated by a petition or application for the granting of any right, privilege, authority or relief from or after administrative action.
 - (4) Contested case. The term "contested case" means any proceeding in which the legal rights, duties, or privileges of specific parties are required by law to be determined after opportunity for hearing before the Director.
 - (5) Rulemaking proceeding. The term "rulemaking proceeding" means any formal action for the adoption, amendment or repeal of any rule or regulation of the Department.
 - (6) Presiding officer. The term "presiding officer" means the person conducting the hearing and may be the Director of Health or his representative.
 - (7) Party. The term "party" shall mean each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party in a hearing.
 - (8) Person. The term "person" includes individuals, partnerships, corporations, associations, or public or private organizations of any character other than agencies.
 - (9) Petitioner. "Petitioner" is a person making or on whose behalf a petition or application is made for a hearing which the Director may hold under statutory or other authority delegated to him or for a declaratory ruling, as to the applicability of any statutory provision or of any Department rule or order, or for the adoption, amendment or repeal of any Department rule or regulation.
 - (10) Respondent. The term "respondent" means the party in a contested case against whom an order to show cause has been issued by the Director on his own initiative or a notice of hearing has been issued on the basis of a complaint filed with the Director.
 - (11) Complainant. The term "complainant" means the person, agency or officer upon whose complaint the proceeding is instituted.

- (b) Unless otherwise specifically stated, the terms used in rules and regulations promulgated by the Department pursuant to powers granted by statute shall have the meaning defined by such statute.
 - (c) A rule or regulation which defines a term without express reference to the statute or to the rules and regulations, or to a portion thereof, defines such terms for all purposes as used both in the statute and in the rules and regulations, unless the context otherwise specifically requires.
 - (d) Use of gender and number. Words importing the singular number may extend and be applied to several persons or things; words importing the plural may include the singular; and words importing the masculine gender may be applied to females.
3. The Department
- (a) Office. The principal office of the Department is at Honolulu, Hawaii. All communications to the Department shall be addressed to the Director of Health, Department of Health, State of Hawaii, Honolulu, Hawaii, unless otherwise specifically directed.
 - (b) Hours. For the purpose of these rules, the offices of the Department shall be open from 7:45 a.m. to 4:15 p.m., Monday through Friday, except holidays, unless otherwise provided by statute or executive order.
 - (c) Requests and submittals. All documents required to be filed herein shall be filed with the Director at Honolulu, Hawaii, within such time limits as prescribed by law, rules and regulations or by order of the Department.

PART B PUBLIC RECORDS

1. The term "public records" as used in this part is defined as in section 7A-1(b), R.L.H. 1955 (1960 Supplement) and shall include all rules, regulations, written statements of policy or interpretation formulated, adopted or used by the Department, all final opinions and orders, and the minutes of meetings of the Board of Health, but shall not include any matter or record accorded confidential treatment pursuant to statute, other laws of the State and rules of the Department.
2. All requests for public records shall be made in writing to the Director. Such writing shall identify the record or describe the character of the record, the purpose for which the request is made, and the use or anticipated use for which the record is desired, including persons or agencies to which such record or information from the record may be made available and including court action or anticipated court action for which such record may be used. Such requests shall be in ink or type-written and must be signed in ink by the requesting party or his duly authorized agent or attorney. For good cause, the Director may deny such requests.
3. When permitted, all public records will be available for inspection in the offices of the Department, Honolulu, Hawaii, during established office hours unless public inspection of such records is in violation of any state or federal law or rules of the Department; provided that, except where such records are open under any rule of court, the attorney general may determine which records may be withheld from public inspection when such records pertain to the preparation of the prosecution or defense of any action or proceeding to which the Department is or may be a party, or when such records do not relate to a matter in violation of law and are deemed necessary for the protection of the right of privacy or the character, reputation or business of any person.
4. Public records printed or reproduced by the Department shall be given to any person upon proper request and the Department may require payment of the actual cost thereof.
5. Requests for public information, for permission to inspect official records or for copies of public records will be handled with due regard for the dispatch of other public duties.

PART C

HEARINGS ON CONTESTED CASES

1. General

- (a) The Department may on its own motion or on petition of any interested person or an agency, of the State or County government, hold a hearing on a contested case as is required by law or rules of the Department. For such purposes it may subpoena witnesses and require the production of evidence. Procedures to be followed by the Department shall, unless specifically prescribed in these rules or by the Hawaii Administrative Procedure Act, be such as in the opinion of the Department will best serve the purposes of such hearings. Also, upon respondent's request, any rule contained in these Rules of Practice and Procedure, may be suspended or waived by the Department or the presiding officer to prevent undue hardship in any particular instance.

2. Commencement

- (a) A hearing on a contested matter shall be commenced by the Department on its own motion or upon the complaint or application of any interested person or agency, of the State or County governments, when the processing of such complaint or application necessitates such a hearing.
- (b) No hearing on a contested case shall be held until due notice shall have been given to all parties as provided in the Hawaii Administrative Procedure Act, Act 103, S.L. 1961.
- (c) A complaint or application by an aggrieved person or proper party or by an interested agency, of the State or County governments, requesting such a hearing shall contain concise statements of: (1) the legal authority under which the proceeding, hearing or action is to be held or made, (2) the disagreement, denial, grievance or such matter which is being contested by the petitioner or applicant, (3) the basic facts and issues raised, and (4) the relief to which the party, petitioner or applicant deems himself entitled. The Department may prepare departmental forms which may be substituted for any petition or application which may be required for any authorized proceedings pursuant to law or rules.
- (d) The Director shall conduct the hearings on a contested case and shall render the decision and shall issue such orders and take such actions as may be required; provided that the Director may designate a representative who shall be the presiding officer and shall conduct such hearings and shall make his recommendations in writing to the Director, which recommendations shall include recommendations as to findings of fact and conclusions of law. The Director shall then render the decisions as to findings of fact and conclusions of law and shall issue such orders and take such actions as may be further required.
- (e) In all such hearings, the presiding officer shall have the power to administer oaths, compel attendance of witnesses and the production of documentary evidence, examine witnesses, to take depositions and certify to official acts, and to perform such other duties necessary for the proper conduct of such hearings.
- (f) Any rule of these Rules of Practice and Procedure may be suspended or waived by the Department or by the presiding officer, before whom the matter is heard, to prevent undue hardship in any particular instance.
- (g) Necessary expenses of or in connection with any such hearings shall be payable from the funds appropriated for expenses of the Department.

3. Appearances before the Department

- (a) An individual may appear in his own behalf, a member of a partnership may represent the partnership, a bona fide officer or employee of a corporation or trust or association may represent the corporation, trust or association and an

officer or employee of an agency of the state or a political subdivision of the state may represent such agency in any hearing before the Department.

- (b) A person may be represented by or with counsel in any hearing under these rules.
- (c) A person shall not be represented in any hearing except as stated in paragraphs (a) and (b) of this section.
- (d) When an individual acting in a representative capacity appears in person before the Department, his personal appearance or signature shall constitute a representation to the Department that under the provisions of these rules and the law, he is authorized and qualified to represent the particular person on whose behalf he acts. The Department may at any time require any person acting in a representative capacity to show proof of his authority and qualification to act in such capacity.
- (e) No person who has been associated with the Department as an officer, employee or counsel thereof shall be permitted to appear before the Department in behalf of, or to represent in any manner, any person in connection with any proceeding or matter which was pending before the Department at the time of his association with the Department unless he shall first have obtained the written consent of the Director upon a verified showing that he did not give personal consideration to the matter or proceeding as to which consent is sought or gain particular knowledge of the facts thereof during his association with the Department.
- (f) No person appearing before the Department in any proceeding or matter shall in relation thereto knowingly accept assistance from any person who would himself be precluded by this section from appearing before the Department in such proceeding or matter.

4. Filing of documents

- (a) All pleadings, submittals, petitions, applications, charges, reports, maps, exceptions, briefs, memoranda, and other papers required to be filed in any hearing shall be filed with the Director or as instructed by the Director. Such papers may be sent by mail or hand-carried to the Department in Honolulu, Hawaii, within the time limit, if any, or as set forth in any law, rule or regulation, for such filing. The date on which the papers are actually received by the Department or at the hearing shall be deemed to be the date of filing.
 - (b) All papers filed with the Department shall be written in ink, typewritten, mimeographed or printed, shall be plainly legible, shall be on strong durable paper, not larger than 8½" x 14" in size except that tables, maps, charts and other documents may be larger, folded, if possible, to the size of the documents to which they are attached.
 - (c) All papers must be signed in ink by the party signing the same or his duly authorized agent or attorney. The signature of the person signing the document constitutes a certification that he has read the document; that to the best of his knowledge, information, and belief every statement contained in the instrument is true and no such statements are misleading; and that it is not interposed for delay.
 - (d) Unless otherwise specifically provided by a particular rule, regulation or order of the Department, an original and five copies of all papers shall be filed.
 - (e) The initial document filed by any person in any hearing shall state on the first page thereof the name and mailing address of the person or persons who may be served with any documents filed in the proceeding.
5. Docket. The Director or his representative shall maintain a docket of all contested cases and each case shall be assigned a number.
6. Computation of time. In computing any period of time prescribed or allowed by these or other applicable rules or regulations or order of the Department, the day of the act, event or default, after which the designated period of time is to run, is not to be included. The last day of the period so computed is to be included

unless it is a Saturday, Sunday or legal holiday in the State of Hawaii, in which event the period runs until the next day which is neither a Saturday, Sunday, nor a holiday. Intermediate Saturdays, Sundays and holidays shall not be included in a computation when the period of time prescribed or allowed is ten days or less. A half holiday shall be considered as other days and not as a holiday.

7. Continuances or extensions of time. Whenever a person or agency has a right or is required to take action within the period prescribed or allowed by these rules, by notice given thereunder or by an order or regulation, the presiding officer may (1) before the expiration of the prescribed period, with or without notice, extend such period; or (2) upon motion, permit the act to be done after the expiration of a specified period where the failure to act is reasonably shown to be excusable.
8. Amendment of documents and dismissal. If any document initiating, or filed in, a contested case is not in substantial conformity with the applicable rules or regulations of the Department as to the contents thereof, or is otherwise insufficient, the Department, on its own motion, or on motion of any party, may strike or dismiss such document, or require its amendment. If amended, the document shall be effective as of the date of the original filing.
9. Retention of documents by the Department. All documents filed with or presented to the Department may be retained in the files of the Department. However, the Department may permit the withdrawal of original documents upon submission of properly authenticated copies to replace such documents.
10. Public Information.
 - (a) Unless otherwise provided by statute, rule or order of the Department, all information contained in any pleading, submittal, petition, application, charge, statement, recommendation, report, map, exception, brief, memorandum or other document filed with the Department pursuant to the requirements of a statute or rule or regulation or order of this Department shall be available for inspection by the public after final decision.
 - (b) Confidential treatment may be requested for good cause where authorized by statute. For good cause shown, the presiding officer shall grant such request.
 - (c) When permitted or authorized, matters of public record may be inspected in the offices of the Department in Honolulu during regular office hours.
11. Decision. All final orders, opinions or rulings entered by the Department in a hearing shall be served upon the parties or persons participating in the hearing by regular mail or personal delivery by the Department.
12. Substitution of parties. Upon motion and for good cause shown, the presiding officer may order substitution of parties, except that in case of death of a party substitution may be ordered without the filing of a motion.
13. Consolidations. The presiding officer, upon his own initiative or upon motion, may consolidate for hearing or for other purposes or may contemporaneously consider two or more hearings which involve substantially the same parties, or issues which are the same or closely related, if it finds that such consolidation or contemporaneous hearing will be conducive to the proper dispatch of its business and to the ends of justice and will not unduly delay the hearings.
14. Intervention. Applications to intervene in a proceeding shall comply with Part C, Section 4, of these Rules and shall be served upon all parties. Applications for intervention will be granted to persons properly seeking and entitled as of right to be admitted as a party; otherwise at the discretion of the presiding officer, they may be denied. As a general policy, such applications shall be denied unless the petitioner shows that he has an interest in a question of law or fact involved in the contested matter.

A state or county medical association or society of Hawaii shall be permitted to intervene in any contested case pertaining to the license of a physician upon the showing that its intervention will serve a public purpose.

PART D

PROCEDURES FOR RULEMAKING PROCEEDINGS

1. Notice of proposed rulemaking
 - (a) When upon its own motion, the Department proposes to issue, amend or repeal a rule or regulation, a notice of the proposed rulemaking action will be published at least once in a newspaper of general circulation in the State at least 20 calendar days prior to the date of the public hearing. Notice shall be mailed to all persons who make a timely request for advance notice of such rulemaking hearing.
 - (b) A notice of the proposed issuance, amendment or repeal of a rule or regulation will include:
 - (1) A statement of the date, time, and place where the public hearing shall be held.
 - (2) Reference to the authority under which the issuance, amendment, or repeal of a rule or regulation is proposed.
 - (3) A statement of the substance of the proposed rulemaking action.
 - (4) Docket number specifically assigned to the rulemaking hearing.
2. Further notice of hearing. For any rulemaking hearing where the Department deems it warranted, an additional notice of the public hearing will be issued by publication thereof in a newspaper of general circulation in the State.
3. Conduct of hearing
 - (a) Presiding officer. Each such hearing shall be presided over by the Director or his representative. The hearing shall be conducted in such a way to afford to interested persons a reasonable opportunity to be heard on matters relevant to the issues involved and so as to obtain a clear and orderly record. The presiding officer shall have authority to take all actions necessary to the orderly conduct of the hearing.
 - (b) Hearing procedure. At the commencement of the hearing, the presiding officer shall read the notice of hearing and shall then outline briefly the procedure to be followed. Evidence shall then be received with respect to the matters specified in the notice of hearing in such order as the presiding officer shall prescribe.
 - (c) Submission of evidence. All interested persons shall be given reasonable opportunity to offer evidence with respect to the matters specified in the notice of hearing. Every witness shall, before proceeding to testify, state his name, address, and whom he represents at the hearing, and shall give such other information respecting his appearance as the presiding officer may request. The presiding officer shall confine the evidence to the questions before the hearing but shall not apply the technical rules of evidence. Every witness shall be subject to questioning by the presiding officer, but cross-examination by private persons shall not be permitted except if the presiding officer expressly permits it.
 - (d) Oral and written presentation at such hearing. All interested persons or agencies of the State or political subdivisions of the State will be afforded an opportunity to submit data, views or arguments which are relevant to the issues. In addition, or in lieu thereof, persons or agencies may also file with the Department within five calendar days following the close of public hearing a written protest or other comments or recommendations in support of or in opposition to the proposed rulemaking. Written protest, comments or recommendations or replies thereto will not be accepted unless an original and five copies are filed. The period for filing written protest, comments or recommendations may be extended by the presiding officer for good cause.
 - (e) Transcript of the evidence. Unless otherwise specifically ordered by the presiding officer, testimony given at a rulemaking hearing shall not be re-

ported verbatim. All supporting written statements, maps, charts, tabulations or similar data offered in evidence at the hearing, and which are deemed by the presiding officer to be authentic and relevant, shall be received in evidence and made a part of the record. Unless the presiding officer finds that the furnishing of copies is impracticable, five copies of the exhibits shall be submitted.

- (f) Continuance of hearing. Each such hearing shall be held at the time and place set in the notice of hearing, but such time and place may be continued by the presiding officer from day to day or adjourned to a later date or to a different place without notice other than the announcement thereof at the hearing.
- 4. Department action. At the close of the final public hearing, the presiding officer shall announce the decision, or he shall announce the date when the decision shall be made.
- 5. Emergency rulemaking. Notwithstanding the foregoing rules, if the Department finds that an imminent peril to public health, safety, or morals requires adoption, amendment or repeal of a rule or regulation upon less than twenty days' notice of hearing, and states in writing its reason for such finding, it may proceed without prior notice or hearing or upon such abbreviated notice and hearing as it finds practicable to adopt an emergency rule or regulation to be effective for a period not longer than 120 days without renewal.
- 6. Petitions for adoption, amendment or repeal of rules
 - (a) Scope. Any interested person or any agency of the State or County government may petition the Department for the issuance, amendment, modification or repeal of any rule or regulation which is designed to implement, interpret, or prescribe law, policy, organization, procedure or practice requirements of the Department.
 - (b) Form and contents. Petitions for such rulemaking action shall conform to the requirements of Part C, Section 4, of these Rules. Such petition for a change of rules shall set forth the text of any proposed rule or amendment desired or specify the rule the repeal of which is desired and state concisely the nature of the petitioner's interest in the subject matter and his reasons for seeking the issuance, amendment or repeal of the rule and shall include any facts, views, arguments and data deemed relevant by petitioner. The Department may also require the petitioner to serve other persons or governmental agencies known to be interested in the proposed rulemaking. No request for the issuance, amendment, modification or repeal of a rule which does not conform to the requirements set forth above will be considered by the Department.
 - (c) Procedure. A petition for a change of rules will be given a docket number and will become a matter of public record upon filing. The Department shall within thirty days following the filing of the petition either deny the petition in writing or may initiate a public rulemaking procedure. No public hearing, oral argument, or other form of proceedings, will be held directly on any such petition, but if the Department determines that the petition discloses sufficient reasons in support of the relief requested to justify the institution of a public hearing, the procedures to be followed will be as set forth in Section 1 to 5 of this Part of these Rules. Where the Department determines that the petition does not disclose sufficient reasons to justify the institution of a public rulemaking action, or where the petition for a change of rules fails in material respect to comply with the requirements of these rules, petitioner will be so notified together with the grounds for such denial. The provisions of this section shall not operate to prevent the Department, on its own motion, from acting on any matter set forth in any petition.

PART E SPECIAL PROCEEDINGS

1. Petition for declaratory rulings

- (a) Form and contents. On petition of an interested person, the Department may issue a declaratory order as to the applicability of any statutory provision or of any rule or regulation or order of the Department. Petitions for the issuance thereof shall state clearly and concisely the controversy or uncertainty, shall cite the statutory authority involved, shall include a detailed statement of all the facts and the reasons or grounds prompting the petition, together with full disclosure of petitioner's interest and shall conform to the requirements of Part C, Section 4, of these Rules.
- (b) Additional data and supporting authorities. The Department, upon receipt of the petition, may require the petitioner to file additional data or a memorandum of legal authorities in support of the position taken by the petitioner.
- (c) Dismissal. The Department may dismiss a petition for a declaratory ruling wherein the petitioner refuses to comply with the requirements of this part in a material respect.
- (d) Consideration. Although in the usual course of disposition of a petition for a declaratory ruling no formal hearing will be granted to the petitioner or to a party in interest, the Director may in his discretion order such proceeding set down for hearing. Any petitioner or party in interest, who desires a hearing on a petition for declaratory ruling, shall set forth in detail in his request the reasons why the matters alleged in the petition, together with supporting affidavits or other written evidence and briefs or memoranda of legal authorities will not permit the fair and expeditious disposition of the petition, and, to the extent that such request for hearing is dependent upon factual assertion, shall accompany such request by affidavit establishing such facts. In the event a hearing is ordered by the Director, Part C of these Rules shall govern the proceedings.
- (e) Declaratory ruling on Department's own motion. Notwithstanding the other provisions of this part, the Department may on its own motion or upon request, but without notice and hearing, issue a declaratory order to terminate a controversy or to remove uncertainty.

2. Obtaining necessary information. The Department may on its own motion or upon the complaint or application of any interested person or an agency of the State or County government hold such proceedings as it may deem necessary from time to time for the purpose of obtaining information necessary or helpful in the determination of its policies, the carrying out of its duties, or the formulation of its rules and regulations. For such purposes it may subpoena witnesses and require the production of evidence. Procedures to be followed by the Department shall, unless specifically prescribed in these rules or by the Hawaii Administrative Procedure Act, be such as in the opinion of the Department will best serve the purposes of such proceedings. Also, any rule of these Rules of Practice and Procedure, may be suspended or waived by the Department or presiding officer before whom the matter is heard to prevent undue hardship in any particular instance.

I, Richard K. C. Lee, M.D., Director of Health, hereby certify that the foregoing Rules of Practice and Procedure were adopted by the Department of Health of the State of Hawaii on the 27th day of April 1962.

RICHARD K. C. LEE, M.D.
Director of Health

Approved as to Form
June 15, 1962

SHIRO KASHIWA
Attorney General

JUL 23 1973

ACT 118

H.B. NO.

1089
H. D. 1
S. D. 1

A BILL FOR AN ACT

RELATING TO ENVIRONMENTAL QUALITY.

RECEIVED
OFFICE OF THE DIRECTOR
DEPT. OF HEALTH

JUL 22 PM 2 25

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Chapter 342, Hawaii Revised Statutes, is amended in the following particulars:

1. By amending Section 342-1 to read:

"Sec. 342-1 Definitions. As used in this chapter, unless the context otherwise requires:

"(1) 'Complaint' means any written charge filed with or by the department that a person is violating any provision of this chapter or any rule, regulation, or order promulgated pursuant to this chapter.

"(2) 'Department' means the department of health.

"(3) 'Director' means the director of health.

"(4) 'Party' means each person or agency named as party or properly entitled to be a party in any court or agency proceeding.

"(5) 'Permit' means authorization to discharge waste which, when granted, takes into account the public

1 interest and contains a schedule of abatement
2 approved by the director; or authorization to
3 construct, modify, or operate any air pollution
4 source; or authorization to emit excessive noise;
5 or authorization to operate a sanitary landfill
6 or open dump.

7 "(6) 'Person' means any individual, partnership, firm,
8 association, public or private corporation, the
9 State or any of its political subdivisions, trust
10 estate or any other legal entity.

11 "(7) 'Pollution' means air pollution, water pollution,
12 or excessive noise as hereinafter defined.

13 "(8) 'Treatment works' means any plant or other facility
14 used for the purpose of controlling pollution.

15 "(9) 'Variance' means authorization to discharge waste
16 when, after public hearing the director finds that
17 the continuance of the function or operation causing
18 the waste discharge to be in the public interest, the
19 value of the continuance to outweigh the harm caused
20 by the waste discharge, and which does not require an
21 immediate schedule of abatement.

22 "(10) 'Waste' means sewage, industrial and agricultural
23 waste, excessive noise, and all other liquid, gaseous,
24
25

1 or solid substance, including radioactive substance,
2 whether treated or not, which may pollute or tend
3 to pollute the atmosphere, lands or waters of this
4 State."

5 2. By amending Section 342-6 to read:

6 "Sec. 342-6 Permits: Procedures for. (a) An application
7 for any permit required under this chapter shall be in
8 a form prescribed by the director.

9 "(b) The department may require that applications
10 for such permits shall be accompanied by plans, specifica-
11 tions, and such other information as it deems necessary
12 in order for it to determine whether the proposed installa-
13 tion, alteration, or use will be in accord with applicable
14 rules, regulations, and standards.

15 "(c) The director shall issue a permit for any term,
16 not exceeding five years, if he determines that such will
17 be in the public interest; provided that the permit may be
18 subject to such reasonable conditions as the director may
19 prescribe. The director, on application, shall renew a
20 permit from time to time for a term not exceeding five
21 years if he determines that such is in the public interest.
22 The director may, on application, modify the conditions
23 of a permit in any manner consistent with the public

1 interest. The director shall not deny an application
2 for the issuance, renewal, or modification of a permit
3 without affording the applicant a hearing in accordance
4 with chapter 91.

5 "The director may, on his own motion or the appli-
6 cation of any person, modify, suspend, or revoke any
7 permit if, after a hearing in accordance with chapter
8 91, he determines that [such is in the public interest.]:

9 "(1) There is a violation of any condition of the
10 permit; or

11 "(2) The permit was obtained by misrepresentation,
12 or failure to disclose fully all relevant facts;
13 or

14 "(3) There is a change in any condition that requires
15 either a temporary or permanent reduction or
16 elimination of the permitted discharge; or

17 "(4) Such is in the public interest.

18 "The director shall insure that the public
19 receive notice of each application for a permit to control
20 water pollution. He may hold a public hearing before
21 ruling on an application for a permit to control water
22 pollution if he determines such public hearing to be in
23 the public interest.

"In determining the public interest, the director shall consider the environmental impact of the proposed action, any adverse environmental effects which cannot be avoided should the action be implemented, the alternatives to the proposed action, the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented, and any other factors which the director may by rule prescribe; provided that any determination of public interest shall promote the optimum balance between economic development and environmental quality.

"(d) The failure of the director to [grant] act on an application for the issuance of a permit or an application by a permit holder for the modification or renewal thereof within [ninety] one hundred eighty days of the receipt of such application shall be deemed a grant of such application so long as the applicant acts consistently with the application and all plans, specifications, and other information submitted as a part thereof.

"(e) No applicant for [a permit or] a modification or renewal [thereof] of a permit shall be held in violation

1 of this chapter during the pendency of his application
2 so long as he acts consistently with the permit previously
3 granted, the application and all plans, specifications,
4 and other information submitted as a part thereof."

5 3. By amending Section 342-7(e) to read:

6 "(e) Any variance granted pursuant to this section
7 may be renewed from time to time on terms and conditions
8 and for periods not exceeding ten years which would be
9 appropriate on initial granting of a variance; provided
10 that the applicant for renewal has met all of the condi-
11 tions specified in the immediately preceding variance;
12 and provided further, that the renewal, and the variance
13 issued in pursuance thereof, shall provide for emission
14 or discharge not greater than that attained pursuant to
15 the terms of the immediately preceding variance at its
16 expiration. No renewal shall be granted except on appli-
17 cation thereof. Any such application shall be made at
18 least [sixty] one hundred eighty days prior to the expira-
19 tion of the variance."

20 4. By amending Section 342-8(c) to read:

21 "(c) Any violation of an order issued by the director
22 may at the discretion of the director subject the violator
23 or violators to the penalties specified in section 342-11
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1 and the injunction remedies specified in section 342-12.

2 "The director is authorized to impose the penalty
3 specified in section 342-11(a) and section 342-11(c) and
4 may institute a civil action in the name of the State to
5 recover the civil penalty which shall be a government
6 realization.

7 "In any proceeding to recover the civil penalty
8 imposed, the director need only show that notice was
9 given, a hearing was held or the time granted for requesting
10 a hearing has run without such a request, the civil penalty
11 was imposed, and that the penalty remains unpaid."

12 5. By amending Section 342-10 to read:

13 "Sec. 342-10 Inspection of Premises. The director
14 may in accordance with law enter and inspect any building
15 or place, for the purpose of investigating an actual or
16 suspected source of water, air, noise or other pollution
17 and ascertaining compliance or noncompliance with this
18 part, [or] any rule, regulation or standard promulgated
19 by the department, any permit or other approval granted by
20 the department and to make reasonable tests in connection
21 therewith. No confidential information secured pursuant
22 to this section by any official or employee of the depart-
23 ment within the scope and course of his employment in the
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1 prevention, control, or abatement of water, air, noise,
2 or other pollution shall be disclosed by the official
3 or employee except as it relates directly to air, water,
4 noise, and other pollution and then, only in connection
5 with his official duties and within the scope and course
6 of his employment."

7 6. By amending Section 342-11 to read:

8 "Sec. 342-11 Violations. (a) Any person who violates
9 this chapter or any rule or regulation promulgated by the
10 department pursuant to this chapter shall be fined not
11 more than [\$2,500.] \$10,000 for each separate offense.
12 Each day of violation shall constitute a separate offense.
13 Any action taken to impose or collect the penalty provided
14 for in this [Section] subsection shall be considered a
15 civil action.

16 "(b) Any person who willfully or negligently violates
17 Part III of this chapter or any rule or regulation promul-
18 gated by the department pursuant to Part III of this chapter
19 shall be punished by a fine of not less than \$2,500 nor more
20 than \$25,000, per day of violation or by imprisonment for
21 not more than one year, or by both.

22 "[~~(b)~~] (c) Any person who denies, obstructs, or
23 hampers the entrance and inspection by any duly authorized
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officer or employee of the department of any building or place which he is authorized to enter and inspect [under section 342-10] shall be fined not more than \$500. Any action taken to impose or collect the penalty provided for in this subsection shall be considered a civil action."

7. By amending Section 342-31 to read:

"Sec. 342-31 Definitions. As used in this part, unless the context otherwise requires:

"(1) 'Coastal waters' means all waters surrounding the islands of the State from the coast of any island to a point three miles seaward from the coast, and, in the case of streams, rivers, and drainage ditches, to a point three miles seaward from their point of discharge into the sea and includes those brackish waters, fresh waters and salt waters that are subject to the ebb and flow of the tide.

"(2) 'Drainage ditch' means that facility used to carry storm run-off only.

"(3) 'Effluent' means the discharge of any substance into state waters, including, but not limited to, sewage, waste, garbage, feculent matter, offal,

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1 ' filth, refuse, any animal, mineral, or vegetable
2 matter or substance, and any liquid, gaseous, or
3 solid substances.

4 "(4) 'Effluent sources' include, but are not limited
5 to, sewage outfalls, refuse systems and plants,
6 water systems and plants, and industrial plants.

7 "(5) 'Sewerage system' means pipelines or conduits,
8 pumping stations, and force mains, and all
9 other structures, devices, appurtenances, and
10 facilities used for collecting or conducting
11 wastes to an ultimate point for treatment or
 disposal.

12 "(6) 'State waters' means all waters, fresh, brackish,
13 or salt, around and within the State, including,
14 but not limited to, coastal waters, streams,
15 rivers, drainage ditches, ponds, reservoirs,
16 canals, ground waters, and lakes; provided that
17 drainage ditches, ponds, and reservoirs required
18 as a part of a pollution control system are excluded.

19 "(7) 'Water pollution' means:

20 "(1) Such contamination or other alteration of
21 the physical, chemical or biological
22 properties of any state waters, including

change in temperature, taste, color, turbidity, or odor of the waters, or

"(2) Such discharge of any liquid, gaseous, solid, radioactive, or other substances into any state waters, as will or is likely to create a nuisance or render such waters unreasonably harmful, detrimental or injurious to public health, safety or welfare, including harm, detriment, or injury to public water supplies, fish and aquatic life and wildlife, recreational purposes and agricultural [,] and industrial [,] research and scientific uses of such waters or as will or is likely to violate any water quality standards, effluent standards treatment and pretreatment standards or standards of performance for new sources promulgated by the department.

"(8) 'Standard of performance' means a standard for the control of the discharge of pollutants which reflects the greatest degree of effluent reduction which the director determines to be achievable through application of the best demonstrated control technology,

processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants.["]

"(9) 'New Source' means any source the construction of which is commenced after the adoption of regulations prescribing a standard of performance which will be applicable to such source."

8. By amending Section 342-32 to read:

"Sec. 342-32 Powers and Duties, Specific. In addition to any other power or duty prescribed by law and in this part the director shall prevent, control, and abate water pollution in the State. In the discharge of this duty, the director may:

"(1) Establish by rule or regulation water quality standards [and] , effluent standards, treatment and pretreatment standards, and standards of performance for specific areas and types of discharges in the control of water pollution, thereby allowing for varying local conditions;

"(2) Appoint a master or masters to conduct investigations and hearings;

"(3) Consult with and advise any person engaged or in-

tending to be engaged in any business or undertaking whose waste, sewage, or drainage is polluting or may tend to pollute state waters;

"(4) Conduct and supervise research programs for the purpose of determining the causes, effects, and hazards of water pollution, the purity and potability of water and the means to monitor the quality of water, or to effect the proper disposal of sewage, drainage, and waste;

"(5) Conduct and supervise state educational and training programs on water pollution prevention, control, and abatement, including the preparation and distribution of information relating to water pollution;

"(6) Consult and advise persons intending to alter or to extend any system of drainage, sewage, or water supply;

"(7) Require complete and detailed plans or reports, on existing works, systems, or plants, and of any proposed addition to, modification of or alteration of any such works system or plant which contain the information requested by the director in the form prescribed by him; which plans or reports shall be made by a competent person acceptable to the director and at the expense of such applicant or owner;

"(8) With the approval of the governor, cooperate with, and receive money from the federal government, or any politi

1 cal subdivision of the State or from private sources for the
2 study and control of water pollution;

3 "(9) Receive or initiate complaints of water pollution,
4 hold hearings in connection with water pollution, and
5 institute legal proceedings in the name of the State for
6 the prevention, control, or abatement of water pollution.

7 "(10) Require the owner or operator of any effluent
8 source or any discharger of effluent to (A) establish and
9 maintain records; (B) make reports; (C) install, use and
10 maintain monitoring equipment or methods; (D) sample effluent
11 and state waters; and (E) provide such other information as
12 the department may require.

13 "(11) Require any permittee or holder of a variance to
14 permit the director or his authorized representative upon
15 the presentation of his credentials:

16 "(A) To enter upon permittee's premises in which an
17 effluent source is located or in which any records
18 are required to be kept under the terms and condi-
19 tions of the permit or variance; and

20 "(B) To inspect any monitoring equipment or method
21 required in the permit; and

22 "(C) To sample any discharge of pollutants."

23 9. By amending Section 342-33 to read:
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1 "Sec. 342-33 Prohibition. No person, including
2 any public body, shall use any State waters for the
3 disposal of waste, [or] engage in activity which causes
4 State waters to become polluted, or violate any water
5 quality permit or term or condition thereof without first
6 securing approval in writing from the director.

7 "No person, including any public body, shall knowingly
8 establish, extend, or alter any system of drainage, sewage,
9 or water supply, or undertake any project in sewage outfall
10 areas where there may be a possibility of alteration of
11 currents depended upon for dilution without first securing
12 approval in writing from the director."

13 10. By amending section 342-34 to read:

14 "Sec. 342-34 Treatment works; construction grants.

15 The director may make grants to any state or county agency of
16 State funds as authorized and appropriated by the legislature
17 for the construction of necessary treatment works to prevent
18 the discharge of untreated or inadequately treated sewage
19 or other waste into any State waters. He shall coordinate
20 the granting of State funds with available federal funds
21 for the same purpose. No grant shall be made for any
22 project unless (1) the project conforms with the State
23 water pollution control plan, (2) the project is certified
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1 by the director as entitled to priority over other eligible
2 projects on the basis of financial as well as water pollution
3 control needs, and (3) the application for the grant contains
4 reasonable assurances that the applicant will provide for the
5 proper and efficient operation and maintenance of the treatment
6 works after its construction[, and (4) the applicant agrees
7 to pay a predetermined portion of the estimated reasonable
8 cost of the project. The basic State grant shall take into
9 account both the portion of the cost to be paid by the
10 applicant and the amount of the federal grant for which the
11 project is eligible, but shall not exceed twenty-five per
12 cent of the estimated reasonable cost. Any additional
13 State funds granted for any eligible project shall be re-
14 imburseable to the State for future federal funds made
15 available for construction of necessary treatment works].
16 If federal funds are available, the applicant shall be
17 required to pay at least fifteen per cent of the estimated
18 reasonable cost of such approved treatment works as defined
19 by PL 92-500. If federal funds are not available, the
20 director may make grants up to one hundred per cent of the
21 estimated reasonable cost of the project."
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11. By adding a new section to read:

"Sec. 342-35 Board Membership. Notwithstanding any law to the contrary, no individual, board or body of this state which grants permits required under this part shall be or include, as a member, any person who receives or has during the previous two years received, a significant portion of his income directly or indirectly from permit holders or applicants for a permit; provided that for the purposes of this section, no agency, board or body of the state shall be considered a permit holder or applicant for a permit."

SECTION 2. The director of health is hereby ordered and directed to make a grant of State funds, from funds already appropriated and authorized by Act 202, Session Laws of Hawaii 1972, part III, section 4, A-1, to the city and county of Honolulu for the construction of facilities necessary to divert sewage now entering Kaneohe Bay from the Kaneohe waste water treatment plant. Such grant shall be for such sums, not to exceed \$12,000,000, as may be necessary to successfully complete the construction of the needed diversionary facility, including mains and outfall. Any grant of State funds made by the director for this purpose is contingent upon the city and county of Honolulu meeting fifteen per cent of the cost of this project.

1 SECTION 3. Severability. If any provision of this Act,
2 or the application thereof to any person or circumstance is
3 held invalid, the invalidity does not affect other provisions
4 or applications of the Act which can be given effect without
5 the invalid provision or application, and to this end the pro-
6 visions of this Act are severable.

7 SECTION 4. Statutory material to be repealed is bracketed.
8 New material is underscored. In printing this Act, the revisor
9 of statutes need not include the brackets, the bracketed material,
10 or the underscoring.

11 SECTION 5. This Act shall take effect upon its approval.

Approved by the Governor

13 on MAY 17 1973